

# EXHIBIT Q

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

THE WIMBLEDON FUND, SPC (CLASS	)	
TT),	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	CASE NO.
	)	2:15-CV-6633-CAS-ASJWx
	)	
GRAYBOX LLC; INTEGRATED	)	
ADMINISTRATION; EUGENE SCHER, AS	)	
TRUSTEE OF BERGSTEIN TRUST; AND	)	
CASCADE TECHNOLOGIES CORP.,	)	
	)	
DEFENDANTS.	)	
_____	)	

VIDEOTAPED DEPOSITION OF KIARASH JAM

TAKEN ON

WEDNESDAY, MARCH 27, 2019

Sandra Mitchell  
C.S.R. 12553

10:29:02 1 A Yes.

2 Q Very good. Now, on the first page of Exhibit 9  
3 we see an e-mail there the bottom from David Bergstein  
4 to you on November 15, 2011; correct?

10:29:12 5 A Yes.

6 Q And he says, "Need you sign this in two places:  
7 The note and the SWOP"; correct?

8 A Yes.

9 Q What did SWOP stand for?

10:29:21 10 A I don't know.

11 Q Was he referencing a swap?

12 MR. WIECHERT: Calls for speculation.

13 THE WITNESS: I don't know.

14 BY MR. WALKER:

10:29:27 15 Q Now, you responded three minutes later saying,  
16 "Printing them now. Can you call me to tell me what  
17 they are"; correct?

18 A Yes.

19 Q And he said shortly thereafter, "Call you in  
10:29:43 20 five"; correct?

21 A Yes.

22 Q Now, looking at the documents themselves, the  
23 next page, 210, is an e-mail from David Bergstein to you  
24 at 4:02 p.m. forwarding what was characterized as a SIP

10:29:57 25 note; correct?

10:29:57 1 A Yes.

2 Q And you understood SIP was referring to Swartz

3 IP?

4 A Sure.

10:30:03 5 Q The next page we actually see a Swartz IP

6 Services, Inc., reference note; correct?

7 A Yes.

8 Q All right. And looking at the first paragraph,

9 it says that, "The undersigned, Swartz IP Services,

10:30:14 10 Inc., promises to pay Wimbledon Fund (Class TT) the

11 principal sum of \$25 million on November 14, 2016;

12 correct?

13 A Yes.

14 Q So it was, effectively, a five-year note?

10:30:30 15 MR. WIECHERT: Calls for a conclusion and a

16 legal conclusion.

17 BY MR. WALKER:

18 Q You can answer the question, sir.

19 A So from 2011, five years later is 2016, yes.

10:30:41 20 Q Okay. And the date of the note there in the

21 middle right column --

22 A November 14th.

23 Q -- was November 14, 2011; correct?

24 A Yes.

10:30:48 25 Q And the principal sum would -- was due on

10:30:50 1 November 14, 2016; correct?

2 A Or 2021.

3 Q Or 2021?

4 A Yes.

10:30:57 5 Q So it was either a five-year or a ten-year  
6 note, depending upon whether it was extended?

7 A Yes.

8 Q If you could look at Page 214, please.

9 Mr. Bergstein sent you by e-mail another SIP

10:31:19 10 note; correct?

11 A Yes.

12 Q Okay. And these were two documents he was  
13 asking you to sign?

14 A That's correct.

10:31:30 15 Q Okay. Did he call you back in five minutes as  
16 the first page of Exhibit 9 indicates?

17 A I don't really remember.

18 Q Did he explain the notes to you?

19 A I don't really remember. I'm sure if I asked

10:31:40 20 him, he said, "It's part of business. It's great."

21 At the time, things were going quite well. So

22 I -- I'm sure he said, "This is great. It's part of

23 what we're doing. It's money we're going to use to

24 build businesses." But I don't specifically remember if

10:31:54 25 he called me five minutes after he sent me that e-mail.

10:31:57 1 Q Did you sign those documents?

2 A I signed them, I believe so, yes.

3 Q At the time that you signed them, did you  
4 understand that you were signing a legal document?

10:32:04 5 A Yes.

6 Q Did you understand that were you signing a  
7 promissory note?

8 A I didn't read it when I signed it. I was  
9 signing for him at the time. He was going through a  
10:32:13 10 pretty public bankruptcy at the time and the press had  
11 really gone after him and painted him in a very negative  
12 light at the time. And he ended up, obviously, winning  
13 that bankruptcy case, as I'm sure you know.

14 So he was vilified. He had said to me,  
10:32:29 15 "Because of all the negative press around me, I can't be  
16 the front. I can't be the guy making some of these  
17 deals. I'd like you to come in and do that. We're  
18 building businesses together."

19 The same thing happened when we bought Miramax  
10:32:42 20 right before this. He couldn't be the front of that  
21 deal and -- and I helped put that deal together and we  
22 ended up closing that transaction. So we had just  
23 closed a rather large deal and he said this is kind of  
24 the next chapter and I had to reason to believe there  
10:32:55 25 was anything wrong or -- or bad going on with any of

10:32:59 1 this stuff. So he sent it to me to sign it and I signed  
2 it.

3 Q And you were content to accommodate his  
4 difficult situation by becoming the front man?

10:33:10 5 A I helped him out, yes.

6 Q And in doing that, you were working together?  
7 MR. WIECHERT: Objection. Vague and ambiguous.

8 BY MR. WALKER:

9 Q Right?

10:33:18 10 Well, let me ask you this: I mean, clearly,  
11 you and Mr. Bergstein were working on the transaction --

12 A David was the boss. I worked for David, yes.  
13 David was calling all the shots, unequivocally.

14 Q But you're a grown man; right?

10:33:31 15 A Yes, sir.

16 Q And you were a grown man back then?

17 MR. WIECHERT: It's argumentative, but we'll  
18 stipulate that he was grown.

19 BY MR. WALKER:

10:33:36 20 Q You were capable of exercising free will?

21 A Yes, I was.

22 Q You were operating other businesses that didn't  
23 involve Mr. Bergstein?

24 A That's correct.

10:33:43 25 Q You had the advice of Majid Zarrinkelk at any

10:33:47 1 time that you required it?

2 A I did.

3 Q You were able to retain counsel and seek legal  
4 advice at any time that you required it; correct?

10:33:54 5 A I did. I didn't think I required it at this  
6 point. I didn't have any reason to believe David was  
7 doing anything wrong. He is a very, very smart man.  
8 And I was assuming he was getting all the legal advice  
9 and doing all that before he would send me something for  
10:34:07 10 signature.

11 Q But there was no barrier to you contacting an  
12 attorney and asking him to advise you on the  
13 ramifications and the particulars of the documents you  
14 were signing?

10:34:16 15 A There were no barriers, but I didn't feel the  
16 need to do that because I trusted Dave at this time.

17 Q Were you working with anyone else other than  
18 Mr. Bergstein in connection with these promissory notes?

19 A No.

10:34:29 20 Q Let me hand you what's been marked --

21 A Call Frymi to fax and stuff. You know, those  
22 kind things, but --

23 Q Yes, sir. But in terms of --

24 A My assistant to make copies, that kind of  
10:34:35 25 stuff, but --



10:34:36 1 Q Other that assistants and staff, you and  
2 Mr. Bergstein were the principals; correct?

3 A I was not a principal. David was a principal.  
4 David was the boss. David called all the shots. David  
10:34:46 5 negotiated every document. I did not.

6 Q But you were the signatory on the documents;  
7 right?

8 A I signed document, yes.

9 Q And you were the signatory for Swartz IP on a  
10:34:53 10 \$25 million promissory note; correct?

11 A Yes, I signed the document.

12 Q And you understood what you were signing?

13 A I actually didn't read it when I signed it. He  
14 sent it to me, said it needed signature. I had signed  
10:35:04 15 hundreds of documents for him before. When it came  
16 through, he needed signatures, and I signed it.

17 Q Let's me hand you what's been marked as  
18 Exhibit 10, sir.

19 (Exhibit 10 was marked for  
10:35:14 20 identification by the Court Reporter  
21 and is attached hereto.)

22 MR. WALKER: Wait, hang on, hang on.

23 THE WITNESS: Do you need this back?

24 MR. WALKER: No, no. That -- that's yours.

10:35:24 25 Let me make sure I didn't -- well, for reason I don't

10:35:28 1 have a courtesy copy, David. Did I give you two? I  
2 might have. Oh, let me have that one. That's got my  
3 notes on it.

4 THE WITNESS: Okay. I can share with him if  
10:35:36 5 that's okay.

6 MR. WALKER: No, no, no. I've got a copy for  
7 him. I'm sorry. I was just -- I handed it to you.  
8 I've got the thick thumb going. Okay.

9 MR. WIECHERT: We didn't have time to read the  
10:35:43 10 notes, Counsel.

11 MR. WALKER: It's -- it wouldn't have helped.

12 MR. WIECHERT: It wouldn't have helped anyway?

13 MR. WALKER: No, sir. They're barely helping  
14 me.

10:35:50 15 BY MR. WALKER:

16 Q Okay. If you could look at Exhibit 10, sir.

17 A Yes, sir.

18 Q Let me know when you've completed your review.

19 A I have.

10:35:55 20 Q All right. So the first page of Exhibit 10 is  
21 an e-mail from Mr. Bergstein to you dated November 15,  
22 2011; correct?

23 A Yes, that's correct.

24 Q And he says, "The agreements I sent were wrong.

10:36:05 25 Here is the corrected note. Other agreement to follow

10:36:07 1 in a minute"; correct?

2 A That's correct.

3 Q Did you ever compare -- I take it that he was  
4 asking you to sign this \$25 million promissory note as

10:36:17 5 the signatory for Swartz IP?

6 A He was asking me to sign another version or  
7 draft of it, it seems to me.

8 Q Did you ever compare the one that you signed  
9 with this one to determine the differences between the

10:36:28 10 two documents?

11 A No, sir.

12 Q But, again, you understood you were going to be  
13 the signatory on a \$25 million promissory note for  
14 Swartz IP?

10:36:37 15 A No.

16 MR. WIECHERT: The question's asked and  
17 answered.

18 THE WITNESS: No.

19 BY MR. WALKER:

10:36:42 20 Q Let me hand you what's been marked as  
21 Exhibit 11, sir.

22 (Exhibit 11 was marked for  
23 identification by the Court Reporter  
24 and is attached hereto.)

25 ///

10:36:52 1 BY MR. WALKER:

2 Q Let me know when you've completed your review  
3 of the document.

4 A I know what this document is.

10:37:05 5 Q All right, sir. Exhibit 11 starts with an  
6 e-mail from Mr. Bergstein to you dated November 15,  
7 2011; correct?

8 A That is correct, sir.

9 Q And the attachment is a clean JSI SWOP 2;  
10:37:17 10 correct?

11 A Yes, sir.

12 Q Was this the other corrected document that  
13 Mr. Bergstein wanted you to sign?

14 A I don't know if this was the other one, but  
10:37:23 15 this was a document he wanted me to sign.

16 Q Okay. And this was a \$25 million note purchase  
17 agreement date November 14, 2011; correct?

18 A Yes.

19 Q Did you review this document prior to signing  
10:37:35 20 it?

21 A No.

22 Q Did you, in fact, sign it?

23 A I believe I did, yes.

24 Q Did you seek the advice of legal counsel with  
10:37:44 25 respect to the ramifications of your signing this as a

10:37:47 1 representative of SIP?

2 A No, I did not.

3 Q Did you confer with Majid Zarrinkelk, your  
4 longtime friend and advisor, with respect to this

10:37:55 5 particular document and the ramifications of signing it?

6 A No, I did not. I didn't feel like I needed to.  
7 Like I said, I didn't have any reason to think David was  
8 doing anything but things that are up and up at this  
9 time. And he needed me to sign it and I did.

10:38:09 10 Q So it's your position that when you engage in  
11 business, if you don't suspect that someone's committing  
12 a crime, you just sign \$25 million obligations without  
13 even reading them?

14 MR. WIECHERT: The question's argumentative.

10:38:21 15 Incomplete hypothetical. Calls for speculation.

16 BY MR. WALKER:

17 Q Please answer the question, sir.

18 A No. I -- I did that for David at the time and  
19 it's been the bane of my existence since.

10:38:34 20 Q Was it your custom not to sign -- not to review  
21 any legal documents, leases, that sort of thing that you  
22 signed?

23 A No, I would -- if -- you know, I would, on --  
24 on multiple occasions, get legal advice when I felt like

10:38:47 25 I needed it. And in this case, like I said, I thought

10:38:49 1 this was all part of doing the business that we were  
2 doing. And he had brought in new financiers and we were  
3 going to build wonderful businesses and, you know, be  
4 successful.

10:38:59 5 Q Did you consider --

6 A I thought these were all part of that.

7 Q Excuse me, sir.

8 A I'm sorry. I interrupted you.

9 Q Did you consider yourself to be a partner with  
10:39:05 10 David Bergstein in these enterprises?

11 A No. It was David Bergstein's --

12 Q You were working together; correct?

13 A Yes, we worked together.

14 Q And you anticipated that you would profit from  
10:39:13 15 these enterprises; correct?

16 A Yes, I did.

17 Q You were doing this for money; correct?

18 A Yes.

19 Q Now, did Mr. Bergstein tell you not to read the  
10:39:21 20 document before signing it?

21 A No, sir.

22 Q Did Mr. Bergstein tell you not to get legal  
23 counsel before signing it?

24 A No, sir.

10:39:29 25 Q Did Mr. Bergstein instruct you not to consult

10:39:31 1 Mr. Zarrinkelk prior to signing it?

2 A No, sir.

3 Q And by "it," I'm referring to the Swartz IP  
4 note purchase agreement.

10:39:39 5 A This thing.

6 Q Yes, sir.

7 A Yes.

8 Q So Mr. Bergstein never instructed you not to  
9 secure legal counsel, or any type of financial advice,  
10:39:45 10 or to consult Mr. Zarrinkelk prior signing this  
11 document?

12 A No. He would send them to me need and need  
13 signatures right way. So he would call and say, "I just  
14 sent you something. I need the signature right away."

10:39:55 15 Q So in each instance, whether it was the  
16 reference note that we've seen earlier for \$25 million  
17 that you signed on behalf of Swartz IP, or the note  
18 purchase agreement for \$25 million that you signed on  
19 behalf of Swartz IP, it was your affirmative decision  
10:40:10 20 not to consult legal counsel; correct?

21 A My affirmative decision? I didn't feel like I  
22 needed to. I trusted David that everything was in  
23 order.

24 Q So you didn't consult legal counsel on that  
10:40:21 25 occasion, did you?

10:40:22 1 A No, I did not.

2 Q And that was your decision to make, was it not?

3 A Yes.

4 Q Likewise, you didn't consult Mr. Zarrinkelk as  
10:40:29 5 your financial advisor with respect to either the  
6 reference note or the note purchase agreement prior to  
7 signing it?

8 A That's correct. I did not consult him.

9 Q And that was your decision not to consult him?

10:40:40 10 A Yes.

11 Q And at no time did Mr. Bergstein instruct you  
12 not to consult counsel, legal counsel, or  
13 Mr. Zarrinkelk?

14 A That's correct.

10:40:48 15 Q Let me hand you what's been marked as  
16 Exhibit 12.

17 (Exhibit 12 was marked for  
18 identification by the Court Reporter  
19 and is attached hereto.)

10:40:56 20 BY MR. WALKER:

21 Q Let me know when you've completed your review  
22 of the document, sir.

23 A I have.

24 Q Exhibit 12 on the first page is an e-mail from  
10:41:15 25 you to David Bergstein dated November 15, 2011; correct?



10:41:22 1 A Yes.

2 Q And the attachment, you indicated, was a SIP  
3 note PDF and the SIP note purchase agreement PDF;  
4 correct?

10:41:31 5 A Yes.

6 Q And the subject that you typed in was SIP  
7 documents; correct?

8 A I didn't type that in. It's just a forward.

9 Q Fair enough.

10:41:37 10 Now, who is Mr. Weinskoski?

11 A My assistant at the time.

12 Q So what did he do in relation to this  
13 particular e-mail?

14 A He probably scanned the documents, named them,  
10:41:50 15 and forwarded them to me.

16 Q Okay. And then when he did that, they were  
17 documents you had already signed?

18 A Yes. I would imagine so, yes.

19 Q And then you forwarded the e-mail along with  
10:42:01 20 the --

21 A Attachments.

22 Q -- the executed documents to Mr. Bergstein?

23 A Correct.

24 Q And you state in your e-mail, "As promised, I  
10:42:09 25 signed the note and one sig on the NPA (I did not sign

10:42:09 1 the note and the NPA as it was an exhibit). I hope this  
2 is correct. Thanks."

3 Did I read that correctly?

4 A Yes.

10:42:24 5 Q And it was your anticipation at the time that  
6 you executed these and sent these to Mr. Bergstein that,  
7 ultimately, you would benefit financially from these  
8 transactions; correct?

9 A Yes. Ultimately, we were building businesses  
10:42:34 10 that we would all benefit from.

11 Q And looking to Page 252.

12 A Yes.

13 Q You signed this document; correct?

14 A I did.

10:42:44 15 Q And you signed it as the signatory, the  
16 representative for Swartz IP Services Group, Inc.;  
17 correct?

18 A Yes.

19 Q And you printed your name, Kia Jam, there;  
10:42:54 20 correct?

21 A Yes.

22 Q And under title you wrote vice president;  
23 correct?

24 A Yes.

10:43:00 25 Q And you understood the ramifications of

10:43:02 1 signifying that you were a vice president of a  
2 corporation at the time that you signed this document;  
3 correct?

4 MR. WIECHERT: The question's vague and  
10:43:09 5 ambiguous.

6 THE WITNESS: I don't know what to do.

7 BY MR. WALKER:

8 Q Sir, let me explain to you what's going on. So  
9 your counsel has the right to tender an objection,  
10:43:16 10 usually to the form of my question.

11 A Okay.

12 Q To protect your rights.

13 A Okay.

14 Q Which he can then urge that objection to the  
10:43:26 15 court later.

16 A So I answer your question no matter what; I  
17 don't have to stop?

18 Q Unless he instructs you not to answer --

19 A Okay. Go ahead.

10:43:30 20 Q -- he's simply making his objection for the  
21 record --

22 A Okay.

23 Q -- to be dealt with before the court --

24 A I understand.

10:43:35 25 Q -- later as he chooses and you're free to

10:43:37 1 answer. So it -- I know it's difficult to focus while  
2 someone's speaking to the side of you and someone's  
3 speaking to the front of you, and it's not a natural  
4 process. But allow him to complete his objection and  
10:43:47 5 when he's done, unless he specifically instructs you not  
6 to answer, then you're expected to answer --

7 A Thank you for explaining it.

8 Q -- consistent with your oath.

9 A Can you repeat the question, please?

10:43:58 10 Q Yes, sir. At the time that you signed this  
11 document that's part of Exhibit 12 entitled the "Swartz  
12 IP Services Group, Inc., reference note due November 14,  
13 2016," that's your signature that appears there as the  
14 representative of Swartz IP; correct?

10:44:16 15 A Yes. Correct.

16 Q And you printed your name there to signify who  
17 it was?

18 A Yes.

19 Q And you wrote in the title vice president;  
10:44:22 20 correct?

21 A Yes.

22 Q And you understood, based upon your prior  
23 experience with your own companies, the significance of  
24 indicating that you were a vice president of Swartz IP  
10:44:31 25 Services Group with this signature; correct?

10:44:34 1 A Yes.

2 Q Going to the next, Page 254.

3 A Okay.

4 Q Now, this is the note purchase agreement that  
10:44:46 5 we've referenced earlier; correct?

6 A Yes. I think so.

7 Q And this is a \$25 million note purchase  
8 agreement; correct?

9 A Yes.

10:44:55 10 Q And you understood at the time that you  
11 executed this document that it was a material document;  
12 correct?

13 MR. WIECHERT: Calls for speculation.

14 THE WITNESS: I don't know what that means.

10:45:04 15 MR. WIECHERT: Vague and ambiguous.

16 THE WITNESS: I don't know what that means.

17 BY MR. WALKER:

18 Q Okay. You understood at the time that you  
19 signed the note purchase agreement that it was a legal  
10:45:11 20 document; correct?

21 A Yes.

22 Q Okay. And you understood that a \$25 million  
23 potential transaction was a serious transaction?

24 MR. WIECHERT: The question's vague and  
10:45:18 25 ambiguous.

10:45:20 1 THE WITNESS: Yes.

2 BY MR. WALKER:

3 Q Do you consider a \$25 million transaction to be  
4 serious?

10:45:25 5 A Yes, sir.

6 Q And you understood at the time you were  
7 executing this document that it was purporting to create  
8 a \$25 million transaction?

9 A Yes.

10:45:37 10 Q Now, if you could go to Page 274, please.

11 There we see the signature line for Swartz IP Services  
12 Group, Inc.; correct?

13 A Yes.

14 Q And we see your signature there; correct?

10:45:54 15 A Yes.

16 Q And you wrote in your name, printed it so  
17 people would -- would be able to discern who signed it;  
18 correct?

19 A Yes. Correct.

10:46:02 20 Q And you wrote in the title of vice president;  
21 correct?

22 A Yes.

23 Q And, again, when you signed the note purchase  
24 agreement at the time that you indicated you were an

10:46:12 25 officer, a vice president of Swartz IP, you understood

10:46:14 1 the significance of that; correct?

2 A Yes.

3 MR. WIECHERT: Objection. Calls for a  
4 conclusion.

10:46:20 5 BY MR. WALKER:

6 Q And you understood at the time that you signed  
7 the note purchase agreement in your capacity as vice  
8 president of Swartz IP that you were representing that  
9 you were, in fact, a vice president of that corporation;

10:46:30 10 correct?

11 A I asked David what am I signing as and he told  
12 me sign as VP, and I signed as VP.

13 Q Yes, sir. But when you did that, you  
14 understood the significance of denoting that you were a

10:46:41 15 VP; correct?

16 MR. WIECHERT: Vague and ambiguous.

17 THE WITNESS: I just signed it. He said he  
18 needed it and I signed and I sent it back to him.

19 BY MR. WALKER:

10:46:48 20 Q Yes, sir. But my question is, at the time that  
21 you signed this note purchase agreement for -- as a  
22 signatory for Swartz IP Services, you understood that  
23 you were signifying that were you vice president of that  
24 corporation; correct?

10:46:59 25 A Yes. I understood that.

10:47:01 1 Q Did you read this note purchase agreement  
2 before you signed it?

3 A No.

4 Q Going to the next page, 275.

10:47:08 5 A Yes.

6 Q Do you see the Schedule A entitled "Information  
7 Relating to Purchaser"?

8 A Yes.

9 Q Why was the principal amount of notes to be  
10:47:18 10 purchased set at 25 million?

11 A I have no idea.

12 Q And you signed it nonetheless?

13 A I didn't sign this document. Is this part of  
14 the same document?

10:47:26 15 Q Yes, sir.

16 A I don't know. I did not read this document.

17 Q Now, going down to Item 2 on that same page, it  
18 states, "All communications including notice of payments  
19 and written confirmation of such wire transfers would be  
10:47:41 20 directed to Keith D. Wellner, the chief operating  
21 officer at Weston Capital Management."

22 Did I read that correctly?

23 A Yes, you did.

24 Q Had you met with or talked with Mr. Wellner?

10:47:53 25 A Yes. I had met Keith Wellner and talked to him



10:47:54 1 on a few occasions, correct.

2 Q Prior to signing the note purchase agreement?

3 A I believe so, yes. He actually came to the  
4 office and was in the office on and off. He and his  
10:48:07 5 partners had come to L.A. a number of times to meet with  
6 David and other parties. I had met them. We had dinner  
7 on one occasion. And then he would just come and sit in  
8 the office right outside of David's office in a cubicle  
9 once in a while and be there for a few days and make  
10:48:23 10 phone calls and whatnot.

11 Q And was Mr. Wellner amenable to answering any  
12 questions you might have about this transaction?

13 MR. WIECHERT: Objection. No foundation.  
14 Calls for speculation.

10:48:35 15 THE WITNESS: I didn't talk shop with Keith.  
16 Our discussions were, you know, light and fluffy.  
17 Nothing about business, really. It was more about they  
18 wanted office space; I'd find office space. What hotel  
19 were they staying at? I told them I have hotel deals  
10:48:48 20 around town if they needed reservations in town.

21 I was more like a concierge service for him.  
22 We did not talk about business. All this stuff was done  
23 with David. David was the one who negotiated all of  
24 these things with all the parties and all the people.

10:48:59 25 BY MR. WALKER:

10:48:59 1 Q And yet you were the party that signed them;  
2 correct?

3 A Yes.

4 Q And did you ever take occasion to ask  
10:49:04 5 Mr. Wellner about the significance of the documents you  
6 were signing?

7 A I did not talk to Keith Wellner about this.

8 Q Was there any barrier preventing you from doing  
9 that?

10:49:13 10 A No, sir.

11 Q Did Mr. Bergstein ever instruct you that at any  
12 time Mr. Wellner was visiting here in California, that  
13 you were not to talk to him about --

14 A No, sir.

10:49:19 15 Q -- this note purchase agreement?

16 A No, sir.

17 Q Did Mr. Bergstein instruct you that at any time  
18 that Mr. Wellner was visiting in California, that you  
19 were not to talk to him about the reference note?

10:49:28 20 A No, sir.

21 Q Was there any barrier to you actually just  
22 walking up and initiating a conversation with him at any  
23 time he was visiting here to ask him about those two  
24 transactions?

10:49:39 25 A No.

10:49:39 1 Q Was there any barrier that prevented you from  
2 picking up the phone and calling him, given the fact you  
3 had already met with him and socialized with him, to ask  
4 him any questions about these two documents?

10:49:50 5 A No.

6 Q Now, did you also ever meet a gentleman named  
7 Hallac?

8 A Albert Hallac, yes.

9 Q And did he also visit here in California?

10:50:02 10 A Yeah, he -- I met him in California on probably  
11 two or three occasions. He was at that same dinner we  
12 talked about. A big dinner with a whole bunch of  
13 people. And in the office once or twice I shook his  
14 hand. And that was about the extent of my dealings with  
10:50:16 15 him as well. There was a couple of e-mails back and  
16 forth. More about, you know, again, office stuff and  
17 things of that sort. But I never discussed any shop  
18 talk with Albert Hallac.

19 Q Now, Mr. Hallac was also an officer with Weston  
10:50:29 20 Capital Management; correct?

21 A I understand that to be case, yes.

22 Q And did Mr. Bergstein ever instruct you not to  
23 ask Mr. Hallac about any aspect of either the note  
24 purchase agreement or the reference note that you

10:50:39 25 signed?

10:50:39 1 A No, sir.

2 Q Was there any barrier preventing you from  
3 contacting Mr. Hallac at any time either over the phone  
4 or when he was here visiting to ask him about either one  
10:50:48 5 of those two legal documents?

6 A No, sir.

7 Q Now, you understand that both Mr. Wellner and  
8 Mr. Hallac have entered guilty pleas in connection with  
9 this fraud --

10:51:04 10 MR. WIECHERT: Objection.

11 BY MR. WALKER:

12 Q -- involving Swartz IP; correct?

13 MR. WIECHERT: Objection. Relevance.

14 THE WITNESS: I know that they've entered  
10:51:08 15 guilty pleas. I don't really know the specifics of what  
16 it was, but I know it had to do with, you know, this  
17 whole world. But I don't know the specifics of what  
18 they pled to or whatever. But, yes, I do know that they  
19 have pled guilty.

10:51:21 20 BY MR. WALKER:

21 Q So you're aware that Mr. Hallac and Mr. Wellner  
22 pled guilty to various crimes that they were alleged to  
23 have committed relating, at least in part, to the Swartz  
24 IP transactions that you participated in; correct?

10:51:34 25 MR. WIECHERT: Objection. Relevance.

10:51:36 1 THE WITNESS: No. I'm aware that they pled  
2 guilty. I don't know specifically to what.

3 BY MR. WALKER:

4 Q And Mr. Bergstein, I take it you're aware, is  
10:51:44 5 serving an eight-year sentence in federal prison for his  
6 involvement with the Swartz IP transaction that you  
7 participated in?

8 MR. WIECHERT: Also objecting on the grounds of  
9 relevance.

10:51:54 10 THE WITNESS: I know that David Bergstein is  
11 serving a sentence. He had a trial and he was  
12 convicted. I don't really know the specifics of what  
13 specifically what he was convicted for. But, yes, I do  
14 know that he is serving time in a penitentiary.

10:52:07 15 BY MR. WALKER:

16 Q A federal prison?

17 A I don't know where he -- what -- I mean, he's  
18 at a place called Taft. I don't know if it's federal or  
19 not. But, yes, he is behind -- he is incarcerated.

10:52:18 20 Q Have you visited Mr. Bergstein since he's  
21 arrived in California at the prison here?

22 A No, sir.

23 Q When was the last time you spoke to  
24 Mr. Bergstein?

10:52:25 25 A I spoke to David during his trial. He called

10:52:30 1 me looking for documents that I might have had in my  
2 possession. He called me about that. And that was the  
3 last time I spoke to David.

4 Q Did you provide him any documents?

10:52:41 5 A To the extent that I had documents, everything  
6 was provided to him and them. I had to do huge document  
7 production for -- for the government, which I did. So  
8 everything I have is out there.

9 Q And when you say you had to provide a huge  
10:52:55 10 document production for the government, you're  
11 referencing in relation to Mr. Bergstein's federal  
12 trial?

13 MR. WIECHERT: Misstates -- assumes facts not  
14 in evidence.

10:53:05 15 BY MR. WALKER:

16 Q Let me ask you this: When you just stated that  
17 you provided a huge document production to the  
18 government, what was that in connection with?

19 A The -- the government, I met with them on  
10:53:15 20 multiple -- on two occasions. They asked me all about  
21 everything kind of related to Bergstein and these  
22 things, and I fully cooperated with them. I went to  
23 New York on two occasions and I sat with a room just  
24 like this with a whole bunch of agency people and I gave  
10:53:32 25 them everything, answered all of their questions, and

10:53:33 1 that was the end of that.

2 Q Okay. And when you were being interviewed, was  
3 that by the U.S. Attorney's Office in New York?

4 A It was by the assistant U.S. attorney in the  
10:53:45 5 Western -- Southern District?

6 MR. WIECHERT: Southern District.

7 THE WITNESS: Southern District of New York.

8 BY MR. WALKER:

9 Q And were they asking you questions about Swartz  
10:53:52 10 IP?

11 A They asked about everything. I don't remember  
12 specifically the questions, but I spent two -- on  
13 separate occasions, two days of, you know, five, six,  
14 seven, eight hours with them. And -- and they asked  
10:54:03 15 everything and I had given them everything I had and  
16 answered all of their questions.

17 Q Did -- did they ask you specifically about  
18 different aspects of the Swartz IP transactions?

19 A I believe they did.

10:54:14 20 Q And did you provide them documents that you had  
21 relating to the Swartz IP transactions in which you  
22 participated?

23 A I provided them with all of the documents they  
24 requested and even more.

10:54:31 25 Q Let me hand you what's been marked as

10:54:33 1 Exhibit 13, sir.

2 (Exhibit 13 was marked for  
3 identification by the Court Reporter  
4 and is attached hereto.)

10:54:35 5 BY MR. WALKER:

6 Q Let me know when you've completed your review.

7 A Okay.

8 Q Now, the first page of Exhibit 13 is an e-mail  
9 from you dated December 2, 2011; correct?

10:55:01 10 A Yes.

11 Q And it's directed to David Bergstein, Keith  
12 Wellner, Jeff Solomon, and Kia Jam; correct?

13 A Yes, sir.

14 Q So you copied yourself?

10:55:11 15 A Yes, sir.

16 Q Was that a standard practice that you  
17 maintained?

18 A Sometimes.

19 Q Now, when you sent these documents to  
10:55:19 20 Mr. Solomon, who did you understand that he was?

21 A Jeff Solomon was an attorney. He's been a  
22 friend of mine for a long time. I've hired him on  
23 multiple occasions. He had come in and was working for  
24 us, I think, part-time at the time. Just, you know,  
10:55:33 25 working as a lawyer.



10:55:36 1 Q And any time prior to December 2, 2011, did you  
2 ever have occasion to ask your good friend and attorney  
3 Mr. Solomon about the ramifications of your execution of  
4 either the Swartz IP note purchase agreement or the  
10:55:47 5 reference note that we've already reviewed?

6 A No, sir.

7 Q There's no barrier preventing you from asking  
8 your good friend and attorney Jeff Solomon about those  
9 two documents prior to signing them, was there?

10:56:01 10 A No, sir.

11 Q Did Mr. Bergstein ever instruct you not to  
12 consult with Mr. Solomon about either your execution of  
13 the note purchase agreement or the reference note that  
14 we've already looked at?

10:56:15 15 A No, sir.

16 Q And you were providing a copy of this to Keith  
17 Wellner?

18 A Yes.

19 Q Why was that?

10:56:24 20 A Because David probably asked me to.

21 Q Now, you write the e-mail and you say, "Gents,  
22 here are the revised docs signed."

23 Did I read that correctly?

24 A Yes, sir.

10:56:36 25 Q And then you direct a note to Keith Wellner

10:56:37 1 directly. "Keith, can you please send me a copy once  
2 they are fully executed"; correct?

3 A Yes, sir.

4 Q Okay. So when you reference that they were the  
10:56:46 5 revised docs, did you participate in the revision?

6 A No, sir.

7 Q Did you compare the original that you were  
8 provided to the revised version to determine what  
9 changes had been made?

10:56:57 10 A No, sir.

11 Q Did you consult either Mr. Solomon or any other  
12 legal counsel to ascertain the ramifications of the  
13 changes that had been made?

14 A No, sir.

10:57:06 15 Q Was there any barrier to you retaining legal  
16 counsel for that purpose?

17 A No, sir.

18 Q But you voluntarily did not do so; correct?

19 A Like I said, I did not think there was anything  
10:57:18 20 nefarious. I thought this was just part of what we're  
21 doing. David was doing this as part of our next kind of  
22 chapter. And I did not have any reason to feel I needed  
23 to get extra protection. I trusted him. He was the guy  
24 running the shop. He was the guy making all these  
10:57:32 25 decisions and dealing with all these people. And I

10:57:34 1 mistakenly trusted him.

2 Q So I take it it's your testimony that you only  
3 consult attorneys when signing legal documents if you  
4 believe there's something nefarious going on?

10:57:44 5 A No. In this particular case -- in this  
6 particular case, I didn't think there was any reason to  
7 consult lawyers. David would -- had a bunch of lawyers  
8 that he was dealing with that were working on a number  
9 of things with him, and I just assumed that these were  
10:57:58 10 all already vetted by -- by legal staff and I didn't  
11 need to do that.

12 Q Even though you were the signatory, you saw no  
13 reason to secure independent legal advice to protect  
14 your own individual interest?

10:58:11 15 A Unfortunately not.

16 MR. WIECHERT: Objection. Asked and answered  
17 now a few times.

18 THE WITNESS: Sorry.

19 BY MR. WALKER:

10:58:16 20 Q Now, when you say, "Jeff, please make sure this  
21 gets loaded up," what was that instructing Jeff to do?

22 A Just to load it up to, like, a, probably, box  
23 or some place where the documents could be find because  
24 there was a -- always a scramble to find documents. So

10:58:30 25 I was trying to be organized; trying to ask Keith to